



## MINUTES OF THE HEARING ON THE PEITITION OF

## **HEARING # 11-14**

## OLD MILL DEVELOPMENT TRUST, 40 SUDBURY ROAD (AKA 65 POWDER MILL ROAD)

A public hearing of the Acton Board of Appeals was held on Monday, November 7, 2011 at 7:30 PM in Room 126 of the Acton Town Hall on the petition of Old Mill Development Trust for VARIANCES from Section 1.3.1 and Section 5 Table of Standard Dimensional Regulations of the Zoning Bylaw to allow the building on the property access from the rear of 65 Powder Mill Road by way of an easement. The subject property is located at 65 Powder Mill Road. Map J3/Parcel 59 and 59-5.

Present at the hearing was Marilyn Peterson, Member; Richard Fallon, Alternate Member; Francis Mastroianni, Alternate Member; Scott Mutch, Zoning Enforcement Officer; and Cheryl Frazier, Board of Appeals Secretary. Also present at the hearing was the petitioner, Leo Bertolami along with his Attorney Richard Nylen, and his Engineer Mark Donohue of Acton Survey and Engineering.

Marilyn Peterson opened the hearing and read the contents of the file. Included in the file was a memo from Roland Bartl, Town Planner. Marilyn asked the petitioner to begin.

Attorney Richard Nylen began by stating he is here tonight as Attorney for Old Mill Development. The applicant is essentially here tonight seeking a waiver from the frontage and access requirements of the zoning bylaw. Mr. Bertolami has a Site Plan Special Permit application pending before the Board of Selectmen for a building in the high southeast corner of the parcel with access via an easement from Sudbury Road. The site plan hearing was continued to December 19, 2011 to await the outcome of the variance petition. They are asking for two variances, one from Section 1.3.1 to seek relief from the access from the frontage and the other is the requirement that there has to be 200 feet of frontage. They already have a Site Plan for the property but never built it due to the economy. When they began discussions on the Site Plan review Scott Mutch, Zoning Enforcement Officer and Roland Bartl, Town Planner told them they had a problem. The problem was that all the area in front of the lot is wetlands. He believes this turns out to be a hardship. Roland Bartl supports their position as stated in his memo. This is the only lot on Powder Mill Road that bans the owner from entering from Powder Mill Road. He added that in terms of it being consistent with zoning it's a commercial building and they meet all the other requirements. It won't derogate from the public good.

Mark Donohoe, of Acton Survey and Engineering said part of the reason they stopped the site work after the last site plan approval, granted in 1999 and renewed and amended in early 2004 and since expired, was due to a neighbor dumping water on the site which caused extreme erosion. Mark recommended to Leo at that time, not to build or go forward with his building until that issue was resolved. It has now been resolved. Rich Fallon asked what the building would be used for. Mr. Nylen said it would be a principal use. The Site Plan with the Selectmen is on hold to await the outcome of the variance petition. The continued hearing will be held on December 19, 2011.

Marilyn asked Scott for comments. Scott Mutch, Zoning Enforcement Officer stated that Mr. Nylen explained it well. It's the only buildable part of the parcel and he thinks it's warranted. Mr. Nylen added that their intent was that the town had a guarantee when they went before the Conservation Commission that the wetlands would be protected. In the Site Plan they built the canoe landing for the town. Rich said the building is so far away it won't impact the canoe landing. The improvements would be in the purview of the Site Plan.

Marilyn moved to close Hearing # 11-14. The hearing was closed.

The Board feels the applicant has met the findings to grant the variances.

The Board voted unanimously 3-0 to GRANT the VARIANCES.

Marilyn to write decision.

Respectfully submitted,

Cheryl Frazier, Board of Appeals Secretary

Marilyn Peterson,

Acting Chair Board of Appeals